

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Guenter Marksteiner)	Facility I.D. Nos. 9614; 25538
Licensee of Stations WHDT-CD, Miami, Florida;)	NAL/Acct. No.: 201341420023
WYDT-CA, Naples, Florida)	FRN: 0005010053

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: July 9, 2013**Released: July 10, 2013**

By the Deputy Chief, Video Division, Media Bureau:

I. INTRODUCTION:

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ we find that Guenter Marksteiner (the “Licensee”), licensee of Stations WHDT-CD, Miami, Florida, and WYDT-CA, Naples, Florida, apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules, by failing to file timely with the Commission the Stations’ Children’s Television Programming Reports.² Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND:

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.³ As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees to file the reports with the Commission and to publicize the existence and location of the reports.

3. On April 12, 2012, the Video Division, Media Bureau, issued a letter to the Licensee (“Letter”), stating that Commission records indicated that the Licensee failed to make the required Form 398 electronic filings for WHDT-CD and WYDT-CA for the second through fourth quarters of 2010 and all four quarters in 2011. The Letter required the Licensee to provide information, supported by the declaration of a person with personal knowledge,⁴ identifying the quarters in which a Children’s Television Programming Report was prepared and placed in the Stations’ public inspection files, and the location of the files.

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3526.

⁴ See 47 C.F.R. § 1.16.

4. On May 14, 2012, the Licensee responded to the Video Division's letter and admitted that the reports were not filed timely with the Commission. The Licensee declared that the reports were timely prepared and placed in the station's public inspection file.

5. On October 1, 2012, the Licensee filed its license renewal applications (FCC Form 303-S) for Stations WHDT-CD and WYDT-CA.⁵ The Licensee reported the violations identified in the audit and additional quarters in which reports for both stations were not timely filed with the Commission.

III. DISCUSSION

6. The Licensee's failure to file with the Commission in a timely manner its Children's Television Programming Reports for WHDT-CD and WYDT-CA constitute apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii).

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹⁰

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹² In this case, based on the Licensee's admissions made as part of the Commission inquiry and self-reported violations made in the renewal applications, we conclude that WHDT-CD is apparently liable for a \$6,000 forfeiture and WYDT-CA is apparently liable for a \$6,000 forfeiture, making a total a \$12,000 forfeiture for the Licensee for these apparent violations.

⁵ File Nos. BRDTA-20121001BDW & BRTTA-20121001BEF.

⁶ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

⁷ 47 U.S.C. § 312(f)(1).

⁸ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁹ *See Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹² 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4) and note to paragraph (b)(4), Section II.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Guenter Marksteiner is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000) for its apparent willful and repeated violation of Section 73.3526(e)(11)(iii) of the Commission's Rules.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, that Guenter Marksteiner SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. In the event that the Licensee wishes to revert WHDT-CD and/or WYDT-CA to low power television status, the Licensee need only notify us of this election and request a change in status for the Station(s).¹³ Should the Licensee elect to revert the Station(s) to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴

¹³ See 47 C.F.R. § 73.6001(d).

¹⁴ See 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Guenter Marksteiner, 47 Winnacunnet Road, Hampton, New Hampshire, 03824, and to its counsel, Lauren Lynch Flick, Esq., Pillsbury Winthrop Shaw Pittman, LLP, 2300 N Street NW, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau